IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9567 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTI M SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9567 of 2003

MS SONA SAGAR for Petitioner No. 1

Ms. Reeta Chandarana, AGP for Respondent No. 1-4

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 05/10/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged

the resolution dated 9-1-2001 passed by the respondent no.1 by which the respondent no.1 was pleased to accept the resignation of the petitioner with effect from 9-11-1989.

2. Short facts leading to the petition are that the petitioner who was working as a Superintendent Class I Officer in the Government Hospital at Gondal, was accused of having accepted some bribe, and was therefore, suspended by an order dated 7-11-1989. The petitioner by her letter dated 9-11-1989 tendered her resignation and also offered an amount equivalent to one month's salary in lieu of one month's notice. The respondents, however, by communication dated 20-11-1989 was pleased to reject the request of the petitioner to accept her resignation.

3. It was stated by the petitioner that thereafter the criminal case filed against the petitioner was tried by the competent Court and the learned Additional Sessions Judge, Morbi, was pleased to acquit the petitioner by judgment dated 15-10-1998. The petitioner has also stated, which has not been disputed by the respondents, that the appeal filed by the State against the judgment of the Additional Sessions Judge, Morbi, was rejected by the High Court on 17-9-1999. Upon her acquittal by the Criminal Court, and acquittal being upheld by the High Court, the petitioner approached the respondents in February, 1999 requesting that she be reinstated in service. The petitioner also made several other representations, but the same were not replied to. On 30th June, 2000, the petitioner requested to the respondents that her resignation sent in November, 1989 be accepted without any further delay. On 31-3-2001, the petitioner made a detailed representation and requested that the period of suspension be regularized, and the petitioner be paid pension and other benefits as per the service rules.

4. The respondents, however, by order dated 9-1-2001 were pleased to accept the resignation of the petitioner with effect from 9-11-1989. The representation of the petitioner dated 31st March, 2001 was turned down by the respondents by communication dated 20th September, 2001 stating inter alia that her services have been brought to an end by acceptance of the resignation with effect from 9-11-1989. She is, therefore, not entitled to receive any benefits for the period preceding the said date. The petitioner has, therefore, filed the present petition mainly challenging the action of the respondent no.1 in accepting the resignation on 9-1-2001 with effect from 9-11-1989.

5. The respondents have filed an affidavit dated 30th September, 2003 contending inter alia that the petitioner was placed under suspension by order dated 7-11-1989, but the said order of suspension could not be served upon the petitioner as she was not present in the Head Quarters. It is further stated that the petitioner applied for leave from 9-1-1989 to 10-11-1989, the day on which the order of suspension was to be served to the petitioner. It is further stated that after passing the order of suspension, the petitioner was doing professional work as a Doctor. It is stated that the request of the petitioner to accept her resignation was turned down by letter dated 20-11-1989 as the petitioner was under suspension. It is further stated in the affidavit-in-reply filed by the respondents that the petitioner thereafter had never reported for duty, and she is, therefore, not entitled to receive any benefit for the period of suspension. It is stated that the petitioner has not remained at the Head Quarters during the period of suspension, and she is, therefore, not entitled to receive subsistence allowance.

6. From the facts, as narrated above, it is clear that in November, 1989 when the petitioner tried to resign from service her resignation was not accepted by the Government. The Government was well within its competence to refuse to accept the resignation of the petitioner since the petitioner was facing serious charge of corruption. The action of the respondents in placing the petitioner under suspension also cannot be faulted. The question, however, that is required to be considered is once having rejected the request of the petitioner to accept her resignation in the year 1989, was it open for the Government to accept the resignation in the year 2001 with effect from 9-11-1989. If the petitioner was not present at the Head Quarters as required by the suspension order, it was open for the respondents to take appropriate legal action against the petitioner and also consider, if permissible, to disentitle the petitioner from receiving subsistence allowance. This, however, would not permit the Government to accept the resignation of the petitioner from the back date, that too, once having rejected the offer of resignation. Even after the criminal case against the petitioner was over and the petitioner was acquitted right upto the stage of High Court, in given set of facts, the Government could have taken a decision whether the facts of the case would permit the Government to initiate separate departmental proceedings notwithstanding the acquittal of the petitioner by the criminal Court. Having decided by

conduct not to initiate any such action, it was open for the Government to accept the resignation of the petitioner prospectively. In the facts of the present case, especially when, earlier request of the petitioner to accept her resignation in the year 1989 was turned down, it was not possible for the Government to accept the very same request for resignation in the year 2001 with effect from 9-11-1989. No rules or regulations have been pointed out in support of this action of the Government. In the facts of the case when earlier the Government had taken a conscious decision to reject the request of the petitioner to permit her to resign and continued the petitioner under suspension for a period of more than 11 years, it was not possible to put back the clock and turn around and contend that now the Government is inclined to accept the resignation with effect from 9-11-1989. The Government cannot avoid the responsibility to regulate the period of suspension of the petitioner from 9-11-1989 atleast till her resignation was accepted vide order dated 9-1-2001 which I find cannot operate with retrospective effect in terms of the service regulations.

7. In view of this discussion, I find that the order dated 9-1-2001 could not have operated retrospectively and it was not possible for the Government to accept the resignation of the petitioner with effect from 9-11-1989 and the order dated 9-1-2001 in so far as it operates retrospectively is quashed and set aside. The result is that the petitioner shall be deemed to have resigned from service from 9-1-2001. It will be open for the respondents to hear the petitioner and regulate the period of suspension from 7-11-1989 i.e. the date on which the suspension order was passed till 9-1-2001 and regulate her entitlements in accordance with the order that may be passed thereon.

8. In the result, the petition is allowed to the above extent. Rule is made absolute accordingly . No orders as to costs.

(Akil Kureshi,J.)

stanley-ak.